

**Testimony of Kevin J. Kennedy  
Director and General Counsel  
Wisconsin Government Accountability Board**

**Senate Committee on Elections and Urban Affairs**

**February 4, 2014  
1:00 p.m.**

**Room 201 Southeast, State Capitol  
Public Hearing**

**Senate Bills 404, 423 and 548  
Assembly Bills 54, 418 and 565**

Chairperson Lazich and Committee Members:

Thank you for the opportunity to comment on the many bills before you today. I am appearing here for information purposes and to answer any questions you or Committee members may have. With the exception of Senate Bill 548 the Government Accountability Board is not taking a position for or against any of these bills.

**Senate Bill 404**

This legislation provides a mechanism for ensuring that voters who are unable to enter an absentee voting location may receive a ballot at the entrance of the location where in-person absentee voting occurs. Federal law requires the delivery of government services to be accessible to persons with disabilities. Other than permitting assistance by an individual of the voter's choosing, Wisconsin law does not set out procedures for accommodating voters who are unable to enter the location where in-person absentee voting occurs.

When the situation arises, the G.A.B. staff advises local election officials to follow a procedure that reflects the statutory steps provided for voters with disabilities unable to enter a polling place. That procedure requires the poll workers to announce they will be taking a ballot outside the polling place to a particular elector who is unable to enter the polling place. Two poll workers take the ballot to the voter. When they return, the poll workers announce they have the ballot and make a notation on the poll list.

The legislation follows the same procedure. The only difference is only one person – the clerk, deputy clerk or person employed by or under the direction of the clerk – takes the ballot to the voter. This reflects the practical consideration that many clerk's offices are staffed by only one person during the absentee voting period. Because this procedure involves absentee voting, there are other safeguards to protect the integrity of the process.

The same announcements and notations are made. In addition, the voted ballot is placed in an absentee carrier envelope signed by a witness to the voting. The absentee ballot is recorded on the absentee voting log and transmitted in the sealed envelope with other absentee ballots to the polling place on Election Day.

Senator Lassa consulted with our staff as she developed the legislation. She also involved us in follow-up discussions when local election officials raised some issues. This legislation provides a good balance to ensure persons with disabilities who are unable to enter the location where in-person absentee voting occurs are able to vote in person.

### **Senate Bill 423 and Assembly Bill 565**

These bills repeal the non-substantive calendar of election events contained in Subchapter II of Chapter 10 dealing with election notices. This subchapter is often out of date because it is not dovetailed with other election law changes. The G.A.B. prepares a calendar of election events for local election officials and the public which is posted in several downloadable formats on our website. <http://gab.wi.gov/publications/2013-2014-election-events-calendar>

### **Senate Bill 548**

This legislation transfers the responsibility for conducting the biennial voter registration list maintenance from local election officials to the G.A.B. The Board directed staff to work with the Legislature to develop this legislation. We appreciate the support of Senator Lazich and Representative Bernier in helping craft and introduce the legislation.

Under the provisions of this bill, the G.A.B. will perform the biennial list maintenance by mailing a non-forwardable post card to any registered voter who has not cast a ballot in the preceding four years. This will occur after the nonpartisan Spring elections in odd-numbered years.

Currently, municipal clerks are required to carry out this responsibility. Because many municipalities did not do this list maintenance before the development of the Statewide Voter Registration System (SVRS), the G.A.B. conducted this process following the 2008, 2010 and 2012 elections. As result, the agency was able to develop cost-effective procedures and tools to ensure the maintenance tasks are completed.

A recent cost benefit analysis done by a group of graduate students at the University of Wisconsin-Madison La Follette School of Public Affairs found that the costs associated with municipalities conducting this task are prohibitive. *Voter List Maintenance in Wisconsin – A Cost Benefit Analysis December, 2013*. In 2005, the Legislative Audit Bureau found that there was a significant level of non-compliance with the list maintenance requirements among the 350 municipalities with voter registration. Legislative Audit Bureau – *An Evaluation: Voter Registration, September 2005*.

This legislation is designed to ensure that the SVRS list maintenance will be conducted efficiently and at considerable cost savings for taxpayers. The result will be a cleaner,

more accurate voter registration list. The Government Accountability Board supports this legislation and urges the Committee to recommend passage in its current form.

#### **Assembly Bill 54**

Assembly Bill 54 would set specific times during which people could vote absentee in the clerk's office. In-person absentee voting would generally be limited to Monday through Friday between the hours of 7:30 a.m. and 6 p.m. However, the bill includes an exception allowing a voter to make an appointment with the municipal clerk to vote anytime Monday through Friday if the municipality offers less than 30 hours of in-person absentee voting. Absentee voting in the clerk's office would not be permitted on weekends.

This legislation has been promoted as a means to ensure all voters in the state, no matter where they reside, have the same opportunity to cast an absentee ballot in-person. It does not address the disparate treatment and limited in-person absentee voting options provided in smaller municipalities. The bill merely creates a 105-hour window in which Wisconsin's 1,852 municipalities may pick and choose what hours to be open.

While large municipalities with diverse populations such as Milwaukee and Madison will be constrained from serving voters who find it difficult to get to City Hall Monday through Friday between 7:30 a.m. and 6:00 p.m., small municipalities can continue to limit their hours to as little as an hour a day or close their offices for several days during the 10 days available for in-person absentee voting. In many municipalities the only way to cast an absentee vote in-person is to track down the municipal clerk and make an appointment because there are no regular office hours. Many part-time clerks do not have regular office hours, even in the days before an election.

The proposed legislation is trying to balance competing interests. While trying to bring a level of uniformity to the absentee voting process, it also seeks to preserve local control for municipalities to best serve its citizens. Local election officials and governing bodies are in the best position to know the voting patterns of their voters and when they must be available to meet the demand for absentee ballots, whether that means accommodating a farming community, a population of commuters, or an urban setting. The purpose of in-person absentee voting is to provide a means for citizens who have difficulty getting to the polls on Election Day to cast their ballot in a secure and public manner.

I recommend that the Committee consider expanding the window to permit in-person absentee voting between 7:00 a.m. and 8:00 p.m., the same hours the polls are open on Election Day. This provides up to 13 hours of in-person absentee voting on 10 business days. In addition, municipalities should be able to provide in-person absentee voting on the weekend between the two weeks preceding the election. This provides all municipalities with the flexibility to serve a diverse range of voters with the opportunity to cast an in-person absentee ballot while providing a standard window for casting absentee ballots. Municipal clerks were most concerned with ending absentee voting on the Friday before Election Day and are generally pleased with the current provision because it enables them to focus on preparing the polls and other Election Day responsibilities.

## **Assembly Bill 418**

This legislation raises the fee for requesting a recount from \$5 per ward to \$25 per ward. It also lowers the threshold for when a fee is required from one half of one percent (.5%) to one quarter of one percent (.25%). It adjusts the thresholds for paying a fee as well. If the difference between the leading a candidate and the petitioner is between one quarter of one percent (.25%) and one percent (1%) the petitioner is required to pay a fee equal to \$25 per ward. If the difference exceeds one percent (1%) the petitioner is required to pay the full cost of conducting the recount.

The number of recounts at any given election is relatively small. There are only a handful of recounts in Fall elections. However, there are usually between 50 and 100 recounts brought to our attention in a Spring election. That is because the number of candidates and election contests is significantly higher for Spring elections. In 2013, there were 9,587 candidates competing for 6,768 state and local offices at the April 2<sup>nd</sup> election.

Despite the relatively low number of recounts, each recount is important to the candidates involved as well as the voters and election officials. For candidates, a recount brings closure to a process in which they have put themselves before their fellow citizens and asked to be chosen to lead their community. For voters, a recount brings certainty and finality to the campaign process. For election officials, a recount is an opportunity to evaluate their performance in the conduct of the election and it may be the only means of recognition for a job well done.

The outcome seldom changes in a recount. Here are some numbers drawn from notes taken by our staff. At the state level we have identified only three contests where the outcome changed since 1979. In the 2010 partisan primary Tyler August lost in the original count by four votes, however after the recount, he prevailed by three votes. In 2013, the incumbent Iron County District Attorney prevailed in the recount by four votes (1,630-1,626) after having lost in the original count by four votes (1,622-1,626).

At the local level, our notes show a reversal of winners after a recount in one race in 2000 and also in 2001, 2003 and 2005. In 2002, we tracked eight contests where the outcome was impacted due to a recount. In five of those contests, the recount resulted in a tie vote and in one a write-in candidate defeated the incumbent whose name appeared on the ballot. In 2004, two contests involved tie votes. In one the original count was a tie and in the second a write-in candidate won after the recount determined a tie vote and the tie was broken as provided by law. In the Village of Cottage Grove in 2010, the recount resulted in a tie vote which was broken by the toss of a coin.

## **Conclusion**

Thank you for the opportunity to share my thoughts with you. I hope this testimony will help inform the Legislature's consideration of these bills. As always, we are available to answer questions and work with you in developing proposed legislation.

Respectfully submitted,

*Kevin J. Kennedy*

Kevin J. Kennedy  
Director and General Counsel  
Wisconsin Government Accountability Board

608-266-8005  
608-267-0500 (Fax)

[Kevin.Kennedy@wi.gov](mailto:Kevin.Kennedy@wi.gov)